

STATE OF MICHIGAN
COURT OF APPEALS

WAYNE GOODMAN and LYNN GOODMAN,

Plaintiffs-Appellees,

v

ALLEN R. MENZIES,

Defendant-Appellant,

and

LAWRENCE POMAVILLE and Estate of ENOS
GOODMAN,

Defendants.

UNPUBLISHED
September 16, 2004

No. 248485
Bay Circuit Court
LC No. 00-004011-CH

Before: Whitbeck, C.J., and Sawyer and Saad, JJ.

PER CURIAM.

After a bench trial, the trial court entered judgment that quieted title in a disputed parcel of land in favor of plaintiffs Wayne and Lynn Goodman. Defendant-appellant Allen R. Menzies¹ appeals the trial court's judgment, and we affirm.

This property dispute involves a parcel of land that is approximately three acres located between defendant's and plaintiffs' land. Plaintiff Wayne Goodman's father, Enos Goodman, originally owned forty acres, which included both defendant's and plaintiffs' land. Enos Goodman subdivided his forty-acre parcel into smaller parcels, and plaintiffs acquired a one-acre parcel in 1968 and an additional one-acre parcel in 1978. In 1969 or 1970, plaintiffs planted and maintained a garden on what was Enos Goodman's land and is now part of the disputed property. In 1974, plaintiffs fenced in an area of Enos Goodman's land for a pasture, which is the remaining portion of the property in dispute. Plaintiffs used all of the disputed land from 1974 to the present. Neither Enos Goodman nor Lawrence Pomaville, a subsequent purchaser, occupied

¹ Because the other named defendants are not parties to this appeal, we will refer to Menzies as "defendant" hereafter.

the disputed land or objected to plaintiffs' use. When defendant purchased his land, the deed contained a description that included the disputed portion of land.

I. Acquiescence

Defendant argues covertly that the trial court should not have ruled that plaintiffs acquired the disputed parcel of property by acquiescence because there was no mistake about a boundary line. Actions to quiet title are equitable in nature and are reviewed de novo. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). A trial court's findings of fact are reviewed for clear error. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). "A finding is clearly erroneous when . . . the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Id.*

There are three theories of acquiescence; (1) acquiescence for the statutory period of fifteen years, (2) acquiescence following a dispute over the property line and an agreement, and (3) acquiescence arising from an intention to deed property to a marked boundary. *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996). The trial court found plaintiffs had acquired the property in this case under the first theory, acquiescence for the statutory period.

Case law has not defined a set of elements for acquiescence. *Walters, supra* at 457. However, "[t]he law of acquiescence is concerned with specific application of the statute of limitations to cases of adjoining property owners who are mistaken about where the line between their property is." *Kipka v Fountain*, 198 Mich App 435, 438; 499 NW2d 363 (1993). Acquiescence applies when property owners mistakenly treat something, such as a fence, as the property line. *Walters, supra* at 459. The doctrine of acquiescence promotes "peaceful resolution of boundary disputes." *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001). Although there does not have to be a bona fide dispute about the property, a mistake about the boundary line is central to the majority of cases involving acquiescence in Michigan. See *id.*; *Sackett, supra* at 682; *Kipka, supra* at 439. Therefore, unless there is a mistake about a boundary line, acquiescence does not apply.

Here, there was no mistake about a boundary line: plaintiffs knew that the land they used belonged to their father and was not within the boundaries of their property. Because the trial court failed to find a mistake regarding the boundary line of the property, it erred in finding plaintiffs had acquired the land by acquiescence.

II. Adverse Possession

Defendant asserts, incorrectly, that the trial court erred when it found that plaintiffs acquired the land by adverse possession. To establish adverse possession, the claimant must prove by clear and cogent evidence that its possession was actual, visible, open, notorious, exclusive, continuous and uninterrupted for the statutory period of fifteen years, and hostile and under claim of right. *McQueen v Black*, 168 Mich App 641, 643; 425 NW2d 203 (1988). The only issue at the trial regarding the elements of adverse possession was whether plaintiffs' use of the land was hostile and without their father's permission. Possession that is hostile does not mean there has to be ill will between the parties. *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976). Hostile use is "use that is inconsistent with the right of the owner, without

permission asked or given, use such as would entitle the owner to a cause of action against the intruder.” *Id.* When a person possesses land up to a certain boundary line, regardless if that boundary line is the true line, the possession is hostile and adverse to the true owner. *Gorte v Dep’t of Transportation*, 202 Mich App 161, 170; 507 NW2d 797 (1993).

Here, the trial court found that plaintiffs possessed and used the property exclusively and as their own for over the fifteen year statutory period. The court found that this use was inconsistent with their father’s rights, who was the landowner at the time. Only plaintiffs used the land from 1974 to the present. Additionally, both plaintiffs testified that they never asked for or received permission from their father to use the disputed land. The trial court did not err in finding plaintiffs’ possession of the disputed area of land was hostile and without permission. Therefore, the trial court’s finding that plaintiffs acquired the disputed area of land by adverse possession was not clearly erroneous.

Affirmed.²

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Henry William Saad

² Though the trial court incorrectly ruled that plaintiffs gained title by acquiescence, it correctly ruled that they had done so under the theory of adverse possession. We will not reverse the trial court’s judgment simply because one of the two alternative bases for its ruling is incorrect. Because the other, correct basis for the judgment is sufficient to support the trial court’s judgment, we will affirm the judgment. See *Echelon Homes, LLC v Carter Lumber Co*, 261 Mich App 424, 438; 683 NW2d 171 (2004) (This Court will not reverse a trial court’s order that reaches the correct result for the wrong reason).